

Memorandum  
Date: May 23, 2018

**RE: FERC Notice of Inquiry on Changes to Pipeline Approval Policy Statement**

The Federal Energy Regulatory Commission (FERC) is [ [HYPERLINK "https://ferc.gov/whats-new/comm-meet/2018/041918/C-1.pdf"](https://ferc.gov/whats-new/comm-meet/2018/041918/C-1.pdf) ] on whether, and if so how, it should revise its currently effective policy statement on the certification of new natural gas transportation facilities. The policy statement guides FERC's determination of whether a proposed natural gas project is or will be necessary for future public convenience and necessity, as required by section 7 of the Natural Gas Act.

**Policy framework:** The primary goal of the policy statement is “to appropriately consider the enhancement of competitive transportation alternatives, the possibility of over building, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain.”

Specifically, the Commission seeks input on the following issues:

- (1) **Determination of need.** FERC's current methodology for determining whether there is a need for a proposed pipeline project relies primarily on the consideration of precedent agreements and contracts for service as evidence of such need. It does not consider other energy resources options (such as energy efficiency, or electricity). Specific concerns raised have included: (a) whether existing infrastructure can accommodate the incremental service to be provided by the proposed project; (b) whether anticipated demand in the project's markets will truly materialize; (c) the potential for renewable energy to meet future demand for electricity generation and its potential impacts on projects designed to serve natural gas-fired generators; (d) the need for FERC to evaluate the new natural gas pipeline infrastructure on a region-wide basis; and (e) whether agreements with affiliates constitute a showing of market need.
- (2) **Exercise of eminent domain and landholder interests.** If an applicant receives a certificate from FERC, NGA section 7(h) authorizes the certificate holder to acquire the property rights necessary to construct and operate its project by use of eminent domain if it cannot reach a voluntary agreement with a landowner. Since issuance of the Policy Statement, FERC's environmental analyses have come to adopt a more expansive consideration of property rights issues, so issues that previously might not have been routinely reviewed in the environmental document – e.g., a project's potential impact on property values, community development, employment, tax revenue, and disadvantaged populations – now are.
- (3) **Evaluation of the environmental impact of a proposed project.** FERC's NEPA documents address a wide variety of alternatives. Alternatives considered include

those contemplated by the applicant and those proposed by agencies, federally recognized tribes, stakeholders, and FERC staff. However, FERC has neither authority to require the construction of any alternative other than the project proposed, nor does it have authority to require the development of nonjurisdictional actions or projects (e.g., renewable projects or energy conservation measures). FERC's NEPA documents also currently include any mitigation measures the applicant will employ to reduce GHG emissions, including mitigation of methane leaks. Further, FERC's NEPA documents discuss the regulations under the Clean Air Act applicable to GHG emissions, recognize that natural gas infrastructure projects contribute GHG emissions that affect global climate change, identify the existing and projected climate change impacts occurring in a project's geographic region, and explain the impacts that climate change may have on a specific project. To the extent there exist relevant federal, regional, state, tribal, or local plans, policies, or laws for GHG emissions reductions or climate adaptations, FERC's NEPA documents address the consistency of a proposed project's direct impacts (e.g., compressor station emissions) with those known climate goals. Individual plans may range in scope and specificity from, for example, general commitments to reduce GHG emissions, to particular plans to reduce GHG emissions by sector, as well as plans to adapt to a changing climate. Some commenters suggest that FERC's current analyses of GHG emissions and climate change are inadequate. They argue that all projects relying on fossil fuels should be considered to cause a significant impact on climate change. Commenters also request that FERC employ the Social Cost of Carbon tool to monetize climate change impacts from estimated GHG emissions.

- (4) Improving the efficiency and effectiveness of its certificate processes.** FERC is seeking comments on improving procedural aspects of project certification.

**Legal framework:** Under NGA section 7(e), FERC shall issue a certificate to any qualified applicant upon finding that the construction and operation of the proposed project—whether pipeline, storage, or liquefaction facilities—“is or will be required by the present or future public convenience and necessity.” FERC only has authority over facilities for the transportation of natural gas in interstate commerce. FERC has no authority to certificate intrastate facilities or facilities for the production, gathering, or local distribution of natural gas, or facilities used for the generation of electric energy.

**Background on policy statement:** The 1990s saw significant growth in natural gas consumption in the industrial and electric generation segments. Due to market forces, industry forecasts at the time showed natural gas-fired electric generation demand tripling in the following twenty years and overall gas demand reaching 32 Trillion Cubic Feet (Tcf) by 2020. Natural gas companies urged FERC to expeditiously authorize new projects to meet anticipated growth in demand. FERC issued the Policy Statement intending that it would provide the natural gas industry with guidance concerning how it would evaluate applications for new natural gas projects. FERC sought “to foster competitive markets, protect captive customers, and avoid

unnecessary environmental and community impacts while serving increasing demands for natural gas.”

**Standard of Review:** The Policy Statement states that FERC will approve an application for a new project only if its public benefits outweigh its residual adverse effects. The Policy Statement described this balancing of benefits and adverse effects as an economic test. In addition, FERC simultaneously considers the environmental impacts of a proposed project and imposes mitigation measures to address potential environmental impacts.

**Executive Order 13807.** On August 15, 2017, President Trump issued EO-13807 “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” EO-13807 states that inefficiencies in the project decision-making process, including the management of environmental reviews and permit decisions or authorizations, “have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment.” EO-13807 directs Federal authorities to “provide transparency and accountability to the public regarding environmental review and authorization decisions,” and “make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.”

**Letter from the Natural Resources Defense Council.** NRDC argues that FERC’s approach incentivizes - rather than limits - overbuilding, and presents significant economic and environmental risks. See link to letter below.

**Recent Pipeline Decisions.** FERC recently issued a 3-2 decision to restrict the consideration of climate change impacts in its environmental assessments for new natural gas pipeline projects. The all-Republican majority wrote FERC will now only consider greenhouse gas emissions associated with a specific proposed pipeline, rather than a broader approach it had taken to consider a project’s impact on production and consumption of natural gas since a federal court ruling on a Florida project. Democratic commissioners argued FERC is obligated to consider the impact new pipelines will have on upstream production and downstream consumption of gas, and the agency does not currently ask for sufficient information on the issue.

## **Outline of Comments**

See questions starting on page 47 of Notice.

Determination of Need: UTC/EFSEC

- Reliance on precedent agreements to determine need.

- Consideration of intended or expected end use.

- System alternatives analysis – what other energy sources are available and competitive for meeting natural gas demand?

- Suggestions: how should FERC consider what other energy sources are available and competitive for meeting the demand? If there are potential alternatives that are not are

not jurisdictional to FERC (i.e., energy efficiency, RE, etc.), how could/should these be factored into the siting review?

Exercise of eminent domain and landowner interests: ECY?

Consideration of Environmental Impacts: ECY

Consideration of upstream / downstream GHGs and criteria used to determine significance?

Consideration of state laws concerning emissions reductions (i.e., targets)

Social cost of carbon tool?

Improvements to efficiency of review process (TBD)

### **Links:**

FERC Notice of Inquiry: [ [HYPERLINK "https://ferc.gov/whats-new/comm-meet/2018/041918/C-1.pdf"](https://ferc.gov/whats-new/comm-meet/2018/041918/C-1.pdf) \t "\_blank" ]

Brief: [ [HYPERLINK "http://www.klgateshub.com/details/?pub=A-Policy-Revolution-to-Match-the-Shale-Revolution-04-25-2018"](http://www.klgateshub.com/details/?pub=A-Policy-Revolution-to-Match-the-Shale-Revolution-04-25-2018) \t "\_blank" ]

NRDC letter: [ [HYPERLINK "https://assets.nrdc.org/sites/default/files/ferc-review-1999-natural-gas-policy-statement-20180418.pdf"](https://assets.nrdc.org/sites/default/files/ferc-review-1999-natural-gas-policy-statement-20180418.pdf) \t "\_blank" ]

Recent FERC Decision on New Market Project: [ [HYPERLINK "https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14922750"](https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14922750) ]